

June 8, 2007

David Russell Snyder  
236 E. Pendle Street  
South Bend, IN 46637

*Re: Formal Complaint 07-FC-127; Alleged Violation of the Open Door Law by the  
Roseland Town Council*

Dear Mr. Snyder:

This is in response to your formal complaint alleging that the Roseland Town Council, of which you are a member, violated the Open Door Law by holding an emergency meeting on May 1.

#### BACKGROUND

The facts do not appear to be in dispute. You allege that you were not given notice calculated to inform you of an emergency meeting held by the Town Council on May 1, 2007 in the home of one of the three members of the town council, Charlie Shields, at 212 Darby Place. Two printed notices were placed under the door of your office in the town hall. One notice stated that the emergency meeting would be held in Roseland Town Hall. The other notice showed an address of 212 Darby Place for the meeting. Both notices stated that an emergency special public meeting would be held at 5:00 p.m. on May 1. The notice bears a notation that copies of the notice were provided to three council members, the clerk-treasurer in her office mailbox, the South Bend *Tribune*, and two notices were posted.

You allege that by reference to a news item in the *Tribune*, the news media, specifically the Tribune, received a telephone call to inform them of the meeting, but you and the clerk-treasurer did not receive a telephone call about the emergency meeting. You allege a violation of the Open Door Law because you did not receive adequate notice of the emergency meeting, and the town council was not authorized to hold an emergency meeting because as reported by the *Tribune*, the meeting was solely to initiate litigation against the clerk-treasurer. You believe that any expenditures that were undertaken or caused by decisions at this meeting are not lawful.

I sent a copy of your complaint to the town council. Town attorney Michael Lipsky sent a response, a copy of which is enclosed. Mr. Lipsky says nothing to dispute your allegation that some members of the town council, the town attorney, and the *Tribune* received a telephone call about the emergency meeting but you did not. He states that the notice was posted at the entrance to the town hall and at the entrance of the actual location of the meeting, 212 Darby Place, the residence of town president Charlie Shields. He states the media was provided notice and a reporter from news station WSBT was present. Notice was distributed to all members of the town council and clerk-treasurer. At the time of the meeting, the clerk-treasurer had an unpublished telephone number that had not been made available to the council.

Mr. Lipsky stated that present at the meeting were Shields, vice president Ted Penn, himself, the reporter, Roseland police officer Larry Miller, residents of Roseland, and at least two non-residents. In essence, Mr. Lipsky and the town do not dispute that the persons responsible for setting the emergency meeting called the media but did not telephone you. No cause or explanation for failing to call you was given.

Mr. Lipsky stated that at about 4:00 p.m. on May 1, the town council was served with a 100-page Complaint for Declaratory Judgment, Permanent Injunction, and Temporary Restraining Order Without Notice. The town council members were named as respondents in their official and individual capacities, as was town marshal Jack Tiller. The petitioner was clerk-treasurer Cheryl Gridley. You were among the named respondents in the lawsuit. The Complaint and Temporary Restraining Order requested that the court order the respondents to cease receiving mail for the town of Roseland, cease seizing records and town documents for which Indiana law charges a clerk-treasurer with the responsibility for maintaining custody and control, enjoin the council from transferring funds of the town and issuing checks on the town bank accounts, deliver to the clerk-treasurer all copies of keys to the offices of the clerk-treasurer, and refrain from ordering its insurance company to exclude Gridley from its insurance policy, among other things.

The town council argues that its emergency meeting was necessary because the lawsuit, if granted, would have resulted in serious financial and or other serious harm to the town. The town was already facing extreme financial distress and hardship at the time. If the prayer for relief set forth in the lawsuit had been granted without opposition, the town may have been prevented from conducting day to day business, suffered irreparable harm, and been enjoined from investigating whether or not the clerk-treasurer is covered under the town's insurance policy that would result in exposing the town to financial liability as the clerk treasurer's bond had been previously revoked. In addition, the town argued that the court may have enjoined the council from distributing town mail due to the clerk-treasurer's failure to distribute town mail in a timely manner, and enjoined the respondents from keeping unauthorized persons from entering the clerk-treasurer's office, as well as other specified problems.

Mr. Lipsky provided a copy of the Petition for Temporary Restraining Order. The petition recited, in pertinent part, that the clerk's bond had been cancelled by the insurance company, council member Penn had made a demand against Ms. Gridley's bond, that as of April 25 the council had adopted a resolution authorizing attorney Lipsky to take legal action against

Gridley to remove her from office, and that petitioner's counsel had contacted Mr. Lipsky on April 26 to advise him that the town should desist the described acts or legal action would immediately be taken, and a temporary restraining order would be filed.

The complaint responses also included the Temporary Restraining Order. Replete throughout the order are findings that beginning in January 2007 and throughout the next several months, the clerk-treasurer was often absent from the town hall, that the clerk-treasurer had removed equipment and documents from the town and taken them to her home, and that council members had attempted to remove the clerk-treasurer from her official duties.

## ANALYSIS

It is the intent of the Open Door Law that the official action of public agencies be conducted and taken openly, unless otherwise expressly provided by statute, in order that the people may be fully informed. Ind. Code 5-14-1.5-1. Public notice of the date, time, and place of any meetings, executive sessions, or of any rescheduled or reconvened meeting, shall be given at least forty-eight hours (excluding Saturdays, Sundays, and legal holidays) before the meeting. Ind. Code 5-14-1.5-5(a). Public notice shall be given by the governing body of a public agency by posting a copy of the notice at the principal office of the public agency holding the meeting or, if no such office exists, at the building where the meeting is to be held. In addition, the governing body shall deliver notice to all news media which deliver by January 1 an annual written request for such notices for the next succeeding calendar year to the governing body of the public agency. IC 5-14-1.5-5(b).

At issue in this complaint is the provision allowing a public agency to meet with less than 48 hours notice as required in IC 5-14-1.5-5(a). The Open Door Law states:

If a meeting is called to deal with an emergency involving actual or threatened injury to person or property, or actual or threatened disruption of the governmental activity under the jurisdiction of the public agency by any event, then the time requirements of notice under this section shall not apply, but:

- (1) news media which have requested notice of meetings must be given the same notice as is given to the members of the governing body; and
- (2) the public must be notified by posting a copy of the notice according to this section. IC 5-14-1.5-5(d).

You contend that the meeting, which you did not attend, was convened to discuss filing a counterclaim demanding that the clerk-treasurer Cheryl Gridley return town records and town equipment that she has in her home. The town convened the meeting with much less than 48 hours' notice. It appears that the town could have posted notice only one hour in advance of the meeting.

This office has stated that "emergency" is defined as "an unforeseen combination of circumstances or the resulting state that calls for immediate action." MERRIAM-WEBSTER

ON-LINE DICTIONARY (2003). The term "disruption" is defined as "to throw into disorder" or "to interrupt the normal course or unity of " and "event" means "something that happens." Id. *See Opinion of the Public Access Counselor, Emergency Meeting held by the Board of the Alexandria Community School Corporation, 03-FC-23.*

Exceptions to openness are to be narrowly construed, in keeping with the public policy of the Open Door Law that states that its provisions are to be liberally construed to effectuate the purposes of the Open Door Law. *See* IC 5-14-1.5-1. The provision that would permit a governing body to meet with less than 48 hours notice to deal with an emergency is an exception to openness. The public agency's burden in court would require it to show that the lawsuit and request for a temporary restraining order was an unforeseen event that threatened the town's property or threatened to disrupt governmental activity under the jurisdiction of the town. To discharge this burden, the town council would have to show that the filing of the lawsuit on May 1 was not foreseen despite having received notice by petitioner's counsel on April 26 that the clerk-treasurer intended to file a petition for a temporary restraining order unless the town council desisted from taking actions antagonistic to the clerk-treasurer.

Accordingly, I find that unless the town council can show that the lawsuit was unforeseen and the meeting was necessary to deal with an emergency involving threatened disruption of the governmental activity of the town occasioned by the lawsuit that did not already exist, the town council violated the Open Door Law.

You also raise an issue with respect to the failure of the two town council members to give you notice of the emergency meeting by telephone. The provision on emergency meetings does not prescribe a type of notice or timing of notice to members of the governing body. Indiana Code 5-14-1.5-5(d) states that the *media* are entitled to the same notice as is given to members of the governing body, and the public must be notified by posting a copy of the notice. I find that the town council did not provide the same notice to you that it provided to the media, but the Open Door Law does not provide a remedy to members of a governing body when other members convene a meeting with only the minimum requirements for notice to the public. In other words, you may bring a complaint concerning your right as any member of the public to the notice. In that respect, in the case of a proper emergency meeting, the town council is required to post notice and provide to the media the same notice as the members of the governing body received. You do not have standing to raise your lack of telephone notice to the public access counselor, in my opinion.

## CONCLUSION

For the foregoing reasons, I find that the Roseland Town Council bears the burden to show that the May 1 emergency meeting met the requirements of the Open Door Law.

Sincerely,

Karen Davis  
Public Access Counselor

cc: Michael Lipsky